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TRANSMITTAL  
FORM

(to be used for all correspondence after initial filing)

Initial Number of Pages in This Submission

3

Application Number

10/757 090

Filing Date

01/20/2004

First Named Inventor

TOM KUSIC

Art Unit

3641

Examiner Name

GABRIEL S. SUKMAN

Attorney Docket Number

## ENCLOSURES (Check all that apply)

- ☐ Fee Transmittal Form
- ☐ Fee Attached
- ☒ Amendment/Reply
- ☐ After Final
- ☐ Affidavits/Declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Reply to Missing Parts/Incomplete Application
- ☐ Reply to Missing Parts under 37 CFR 1.52 or 1.53

- ☐ Drawing(s)
- ☐ Licensing related Papers
- ☐ Petition
- ☐ Petition to Convert to a Provisional Application
- ☐ Power of Attorney, Revocation
- ☐ Change of Correspondence Address
- ☐ Terminal Disclaimer
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- ☐ Appeal Communication to Board of Appeals and Interferences
- ☐ Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
- ☐ Proprietary Information
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Remarks

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

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TOM KUSIC

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08/19/2005

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Tom Kusic  
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August 19, 2005

Commissioner for Patents  
Patent and Trademark Office  
P.O. Box 1450  
Alexandria  
VA 22313-1450  
United States of America

Re: Application number 10/759,090  
Filing Date: 01/20/2004  
Name of Applicant: Tom Kusic  
Invention Title: Aircraft Spiralling Mechanism - B

Attention: Examiner Mr. Gabriel S. Sukman

Thank you for your correspondence with the mailing date 07/27/2005. In response to your assertion that the claims are directed to patentably distinct species, and that I am required to elect only a single species from a choice of a) and b), and then a single species from a choice of c) and d), I elect that prosecution proceed on the basis of b), that is, where mechanical action by the fin rotating mechanism to pivotally rotate one fin relative to the tube can cause rotation of another fin.....

With respect to making a choice between c) and d), other examiners at the USPTO have determined that a missile and an airplane are not patentably distinct species, refer to patent applications 10/173,633, 10/173,634 and 10/174,976. The examiners stated that an application for a missile was the same as an application for an airplane, and that as such only one application would be able to proceed. That is, other examiners at the USPTO have concluded that missiles and airplanes are obvious variants of one another. Accordingly, I believe that missiles and airplanes should not be treated as patently distinct in the current examination. But as I am required to make an election of either d) or c) for the examination to continue even if missiles and airplanes are obvious variants of one another, I elect the examination to continue on the basis of c) "the aircraft being a missile".

The claims specifically readable on the species b) elected above, that is, "aircraft with spiral inducing assembly in which mechanical action by the fin rotating mechanism can cause rotation of another fin" are:

2, 5, 8, 15, 16, 17, 18, 19, 23, 24, 27, and 28.

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(Application number 10/759,090, Art Unit 3641)

I believe that the remaining other claims in the application are generic. None of the claims are exclusive of any other claim. The descriptions of the aircraft of Claims 1, 3, 4, 6, 7, 9, 10, 11, 12, 13, 14, 20, 21, 22, 25, 26, 29, and 30, are not incompatible with one another, and the description of each aircraft in any one claim can be incorporated within the description of any other claim.

The reference to ".....mechanical action....." in the elected species is not inconsistent with the aircraft described in claims 1, 3, 4, 6, 7, 9, 10, 11, 12, 13, 14, 20, 21, 22, 25, 26, 29, and 30.

That is, the restriction in the elected species d) ".....mechanical action...." could easily be inserted in the claims 1, 3, 4, 6, 7, 9, 10, 11, 12, 13, 14, 20, 21, 22, 25, 26, 29, and 30, without changing the structure of the aircraft that is described in those claims.

The drawings in my application show one type of aircraft only, and that the aircraft could be in the form of either a missile or an airplane, which have been deemed to be obvious variants of one another by other USPTO examiners. The one type of aircraft in the drawings can be accommodated by all of the claims in my application.

Accordingly, I believe that all claims 1 to 30 in my application are readable on the elected species.

Yours sincerely,



T. Kusic

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